

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
                                  )  
                                  )  
v.                              )      No. 08 CR 888  
                                  )      Hon. James B. Zagel  
ROD BLAGOJEVICH, et al.    )  
                                  )

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO  
PRECLUDE TESTIMONY OF CONVICTED WITNESSES WHO HAVE  
NOT BEEN SENTENCED**

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully responds to defendant Rod Blagojevich's Motion to Preclude Testimony of Convicted Witnesses Who Have Not Been Sentenced, as follows:

1. Defendant Rod Blagojevich argues the use of testimony from government witnesses who are convicted of crimes but not yet sentenced violates his due process rights. The defendant does not cite a single case holding that the use of such testimony, which is routine in federal courts across the United States, violates a defendant's due process rights.
2. The Seventh Circuit has found the use of such testimony proper. *United States v. Condon*, 170 F.3d 687 (7<sup>th</sup> Cir. 1999).
3. The defendant's argument goes to the weight the testimony should be given by the jury, not its admissibility. Indeed, Seventh Circuit pattern jury

instructions address this concept. *See* Seventh Circuit Pattern Instruction 3.13.

Accordingly, the defendant's motion to preclude the testimony of government witnesses who have not been sentenced should be denied.

Respectfully submitted,  
PATRICK J. FITZGERALD  
United States Attorney

BY: /s/ Reid Schar  
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**CERTIFICATE OF SERVICE**

The undersigned Assistant United States Attorney hereby certifies that the following documents:

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were served on April 27, 2010, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

s/Reid Schar \_\_\_\_\_  
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